

EXHIBIT F



IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

WILLIAM MCGINNIS

vs.

WB HOMES INC

NO. 2018-19272

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
MONTGOMERY BAR ASSOCIATION
100 West Airy Street (REAR)
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

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IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

WILLIAM MCGINNIS, et al.	:	CIVIL ACTION – LAW
Plaintiff,	:	
vs.	:	
W.B. HOMES INC., et al.,	:	NO. 2018-19272
Defendants.	:	

TO: Howard Lynch Plastering, Inc.
305 Pruss Hill Road
Pottstown, PA 19464

Antonio Coletta, LLC
101 Hardwood Lane
Ivyland, PA

NOTICE

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Montgomery County Bar Association – Lawyer Referral Service
100 West Airy Street
Norristown, PA 19401
Phone: 610-279-9660
Fax: 610-279-4321 & 610-279-4846

Wetzel Gagliardi Fetter & Lavin LLC

/s/ Curtis P. Cheyney, III, Esquire
Attorney Id. No. 03827
101 East Evans Street
Walnut Building – Suite A
West Chester, PA 19380-2600
(484) 887-0779, Ext. 105

Attorney for Defendants,
W.B. Homes, Inc.;
William J. Bonenberger,
a/k/a William J. Bonnenberger;
Penn Gwyn LP; and
Thornby Development Corp.

Case# 2018-19272-100 Docketed at Montgomery County Prothonotary on 05/07/2020 4:43 PM, Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

WETZEL GAGLIARDI FETTER & LAVIN LLC
By: Curtis P. Cheyney, III, Esquire
Identification No.: 03827
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Attorney for Defendants,
W.B. Homes, Inc.; William J. Bonenberger,
a/k/a William J. Bonnenberger; Penn Gwyn LP;
and Thornby Development Corp.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

WILLIAM McGINNIS, et al.	:	CIVIL ACTION – LAW
2573 Muirfield Way	:	
Lansdale, PA 19446	:	
Plaintiffs,	:	
vs.	:	
W.B. HOMES INC., et al.,	:	NO. 2018-19272
404 N. Sumneytown Pike, Suite 20	:	
North Wales, PA 19454	:	
Defendant	:	
and	:	
PENN GWYN, L.P.	:	
404 N. Sumneytown Pike, Suite 20	:	
North Wales, PA 19454	:	
Defendants.	:	
and	:	
THORNBYS DEVELOPMENT CORP.	:	
404 N. Sumneytown Pike, Suite 20	:	
North Wales, PA 19454	:	
Defendants.	:	
and	:	
W.B. HOMES DEVELOPMENT CO., INC.	:	
404 N. Sumneytown Pike, Suite 20	:	
North Wales, PA 19454	:	
Defendants.	:	
and	:	
vs.	:	
HOWARD LYNCH PLASTERING, INC.	:	
305 Pruss Hill Road	:	
Pottstown, PA 19464	:	

Additional Defendant :

and :

ANTONIO COLETTA, LLC :

101 Hardwood Lane :

Ivyland, PA :

COMPLAINT TO JOIN ADDITIONAL DEFENDANTS

AND NOW, come the defendants, W.B. Homes, Inc., William J. Bonenberger, and Penn Gwynn, L.P., by and through their attorneys, Wetzel Gagliardi Fetter & Lavin LLC, and assert their Complaint to Join against Howard Lynch Plastering, Inc. and Antonio Coletta, LLC, stating as follows:

1. On or about August 24, 2018, Plaintiffs William McGinnis and Rose Marie McGinnis, h/w, filed a Complaint in the Court of Common Pleas of Montgomery County, PA against, *inter alia*, Defendants, W.B. Homes, Inc., William J. Bonenberger, and Penn Gwynn, L.P.

2. Without admitting the truth, the legal sufficiency of any claimed right or remedy, or the veracity of Plaintiffs' pleadings, the said Complaint pleads that their home located at 2573 Muirfield Way, Lansdale, PA (the "Home") was purchased by them pursuant to an Agreement of Sale dated October 12, 2003, in which Agreement W.B. Homes, Inc. was "seller" and "builder"; and, Plaintiffs allege that their purchased home was defectively designed, marketed and constructed, so as to cause Plaintiffs damages as more fully expressed in their Complaint.

3. Without admitting the truth, the legal sufficiency of any claimed right or remedy, or the veracity of Plaintiffs' pleadings, the Plaintiffs' Complaint pleads that as a consequence of the alleged defective design, marketing and construction of their home, the

Plaintiffs experienced water intrusion into the home's structural elements and consequential damages.

4. Plaintiffs' Complaint pleads fourteen (14) causes of action asserting liability against the Defendants of their Complaint. A copy of Plaintiffs' Complaint is attached hereto as Exhibit "A".

5. Defendants W.B. Homes, Inc., William J. Bonenberger, and Penn Gwynn, L.P. filed an Answer to the Complaint with New Matter defenses on February 12, 2019.

6. Defendants W.B. Homes, Inc., William J. Bonenberger, and Penn Gwynn, L.P. filed an Amended Answer to the Complaint with New Matter and Crossclaims on December 16, 2019, a copy of which is attached hereto as Exhibit "B".

7. Said Defendants deny any and all liability asserted and reassert that they have a full and complete defense to the averments and allegations of Plaintiffs' Complaint.

8. Additional Defendants, Howard Lynch Plastering, Inc. and Antonio Coletta, LLC, at all times material to the allegations of Plaintiffs' Complaint, were subcontractors and suppliers of Defendant W.B. Homes, Inc., whose services and materials (supplied to W.B. Homes, Inc. as general contractor) were, pursuant to Additional Defendants' contracted promises and assurances, employed and utilized in the construction of the Home, specifically the Home's exterior cladding of stucco and stone facing systems which were alleged by Plaintiffs to be defective, deficient and nonconforming to Plans, Specifications and Codes.

9. Howard Lynch Plastering, Inc., is a Pennsylvania corporation, whose business address is 305 Pruss Hill Road, Pottstown, PA 19464; and Howard Lynch Plastering, Inc. was, pursuant to a subcontract with W.B. Homes, Inc., the subcontractor for construction services

and materials to construct the stucco exterior cladding system of the Home pursuant to a written contract, which is attached hereto as Exhibit "C".

10. Antonio Coletta, LLC is a Pennsylvania limited liability corporation, whose business address is 101 Hardwood Lane, Ivyland, Pa.; and Antonio Colletta, LLC was a subcontractor to W.B. Homes, Inc. for contract services and materials for the stone facade system applied to the Home pursuant to a verbal contract and understanding, including its personal promises and assurances that the services and materials would conform to Plans, Specifications, Codes, and that the services would be of good, workmanlike quality, conforming to industry standards of stone masons performing like services in the community.

11. By Order of April 23, 2020, the Honorable Kelly C. Wall granted leave to W.B. Homes, Inc., William B. Bonenberger and Penn Gwynn, L.P. to file the instant Complaint to Join Howard Lynch Plastering, Inc. and Antonio Coletta, LLC as Additional Defendants. Attached as Exhibit "D" is a true and correct copy of the Order and Stipulation of Counsel.

12. Each subcontractor identified in the paragraphs above had a subcontract, whether written or verbal, with W.B. Homes, Inc. for the construction of the Home, including an agreed scope of work, an agreed upon insurance scheduling, including liability insurance protection for themselves as subcontractors and also for W.B. Homes, Inc., for which services each has been paid. See, insurance schedules, attached as Exhibits "E" and "F".

13. Howard Lynch Plastering, Inc. agreed, pursuant to its written contract, as follows (emphasis in original):

11. **INDEMNIFICATION:** Subcontractor assumes entire responsibility and liability and shall defend, indemnify and hold harmless the Contractor (including its Officers, Directors, Subsidiaries, and all other related, affiliated and created entities including but not limited to General Partnerships, Limited Partnerships, Limited Liability Corporations, Representatives, successors, assigns, agents, and employees), the Contractor's surety, the Contractor's other subcontractors and suppliers, the Owner and each of their agents, representatives, consultants and

employees (the "Indemnities") for, from and against any and all claims, demands, liabilities, penalties, fines, settlements, interests, loss, damage, attorney fees, costs and/or expenses, of whatsoever kind or nature, including but not limited to property damage or for personal injuries (including death) to any and all persons, resulting from the Subcontract Work (including but not limited to that resulting directly or indirectly from work performed under the Subcontract, any change order, any other work incidental thereto and any other work performed by the Subcontractor and/or its subcontractors/ suppliers related to the Principal

Contract, whether performed at or off the project site, or resulting directly or indirectly from hazardous or radioactive waste or product on, in or entering the project site or the condition of the site), arising there from or in any manner occurring in connection therewith, even if caused, solely or in part by any negligent, grossly negligent, willful or other, act or omission of any Indemnities, the Subcontractor, the Subcontractor's subcontractors or suppliers, their agents, representatives or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, whether they are known or unknown to Contractor and/or Subcontractor. If any and all claims against the Indemnities by any employee of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, the Subcontractor's subcontractors or supplies, their agents, representatives or anyone for whose acts the Subcontractor may be liable, for which the Contractor is seeking indemnification under this paragraph, the indemnification obligation shall not be limited in any way by any applicable provisions of any workers' compensation acts, disability benefit acts or other employee benefit acts and for this purpose, the Subcontractor hereby waives its right to immunity as an employer under any workers' compensation act, disability benefit acts or other employee benefit acts. The Subcontractor further agrees to defend, indemnify and hold harmless the Indemnities from any and all manner of claims, damages or suits for infringement or violations of patents or patent rights and including all costs and expenses (including attorney's fees) which the indemnities may incur or sustain in connection with the same. Subcontractor acknowledges that specific consideration has been received by it for this indemnification.

14. In the event of a judicial finding of liability against Defendants W.B. Homes, Inc., William J. Bonenberger, and/or Penn Gwynn, L.P., which liability is expressly denied, and each said Defendant reasserts, preserves and restates their affirmative defenses, then, and in such circumstances of a judicial finding of liability, the said Defendants, individually and collectively, assert that the Additional Defendants Howard Lynch Plastering, Inc. and Antonio Coletta, LLC, are alone liable to Plaintiffs, liable over to and/or jointly and severally liable to the joining Defendants, and each is and has been obligated to insure W.B. Homes, Inc., William

J. Bonenberger and Penn Gwynn, L.P. and including the home constructed thereon, for all of the alleged damages asserted in the Plaintiffs' Complaint.

15. In the event of a judicial finding of liability against Defendants W.B. Homes, Inc. and/or William J. Bonenberger and/or Penn Gwynn, LP, which liability is expressly denied and each of their respective affirmative defenses are reasserted, preserved and restated, the said Defendants, individually and collectively, assert claims of liability against the Additional Defendants that they are solely liable to Plaintiffs, jointly and severally liable with the Defendants (or any of them), and liable over for contribution and/or indemnity, the said Defendants preserving and asserting all of their rights and remedies, whether in tort, in expressed written or verbal contract, at common law, and/or in equity, which they have for contribution and/or indemnity.

WHEREFORE, Defendants respectfully request that this Honorable Court, upon and if cause is shown by Plaintiffs, to enter judgments in favor of Defendants W.B. Homes, Inc., William J. Bonenberger, and Penn Gwynn, L.P., and against Additional Defendants Howard Lynch Plastering, Inc. and Antonio Coletta, LLC in this Civil Action for indemnity and/or contribution for any judgment that may be entered against the said Defendants for any sums Plaintiffs may recover from any of the aforesaid Defendants arising from or related to the Plaintiffs' Complaint; and for such other and further relief as the Court may deem just and proper.

WETZEL GAGLIARDI FETTER & LAVIN LLC

By: 

CURTIS P. CHEYNEY, III

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Plaintiff,	:	
vs.	:	
WB HOMES INC., et al.,	:	NO. 2018-19272
Defendants.	:	

VERIFICATION

The undersigned, defendant in this matter, verifies that the facts averred in the foregoing Complaint to Join are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsifications to authorities.

WB Homes, Inc.

By: _____


 William Bonenberger, CEO

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